

On June 7, 2004, Applicant filed a Petition to the Director under 37 C.F.R. §1.181(a)(1) to compel entry and consideration of the Declaration by the Examiner. The Applicant's Petition was granted on July 12, 2004, and the file was returned to the Examiner to take action not inconsistent with the decision on the petition.

Six weeks later, on August 24, 2004, having received no word of further action by the Examiner subsequent to the granting of Applicant's Petition, Applicant's undersigned attorney contacted the Examiner to inquire as to the status of the application and whether the Declaration had been considered.

The Examiner stated that the Declaration had been considered when originally submitted with the Response After Final and the Notice of Appeal but that she had inadvertently checked the wrong box on the Advisory Action issued May 7, 2004, thus incorrectly indicating that the Declaration would not be entered and considered.

The Examiner stated that the Declaration did not place the application in condition for allowance as the data submitted therein was directed to T cells only, whereas Claim 1 was directed generically to any tissue. Applicant's attorney pointed out that the data presented in the Declaration also included data relating to other cell types (e.g., liver and kidney cells), and not only T cells.

The Examiner stated that the cell types presented in the Declaration were different than the cell types taught in the prior art references. It is Applicant's position that the cell types of the prior art references (i.e., dead connective tissue cells) are literally excluded by the language of the Applicant's claims.

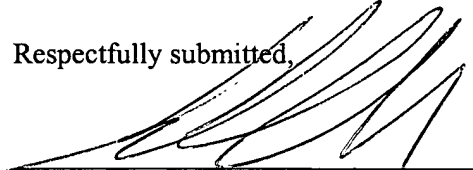
The Examiner stated that the Declaration does not overcome the rejections because the scope of the data presented in the Declaration is not commensurate with the scope of Applicant's claims. This is not a relevant consideration, since the Declaration was submitted to address the Examiner's incorrect factual interpretation of the references, not to demonstrate enablement of Applicant's claims.

No agreement with respect to the claims or anything else was reached.

Applicant's attorney points out that he was not seeking an interview on the merits of the application by telephoning the Examiner on August 24, 2004. Rather, Applicant's attorney was only seeking to know the outcome of reconsideration of the inventor's Declaration, since the period for submission of Applicant's Brief in support of the appeal noticed on March 24, 2004 was still running and careful consideration of the Declaration might have affected the final rejections to be addressed on appeal.

This paper is being filed within one month of the interview and the Interview Summary being issued. Accordingly, no fees are believed to be required for this submission. However, the Director is hereby authorized to charge any fees determined to be required in connection with filing of this paper to Deposit Account No. 50-0268.

Respectfully submitted,



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CERTIFICATE OF MAILING

The undersigned hereby certifies that this correspondence is being deposited with the U.S. Postal Service as first class mail, in an envelope addressed to **Mail Stop AF**, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia, 22313-1450, on the date indicated below.

Sept. 13, 2004
date


Nasim G. Memon